



REPUBLIC OF KENYA



KENYA LAW
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**Bosire v Republic (Criminal Appeal E137 of 2020)
[2026] KECA 179 (KLR) (30 January 2026) (Judgment)**

Neutral citation: [2026] KECA 179 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL E137 OF 2020
P NYAMWEYA, LA ACHODE & JM MATIVO, JJA
JANUARY 30, 2026**

BETWEEN

JONATHAN CHISAYA BOSIRE APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the judgment delivered by the High Court (Maina J.) on
17th October 2019 in Nyamira High Court Criminal Appeal Number 1 of 2019)*

JUDGMENT

1. Jonathan Chisaya Bosire (the appellant) was charged with the offence of defilement contrary to section 8 (1) and (2) of the *Sexual Offences Act* (the Act) at the Senior Resident Magistrate's Court at Keroka in Criminal Case No. 5 of 2017. He pleaded guilty to the offence but when the facts were narrated by the prosecution, he declined to admit them. Accordingly, a plea of not guilty was entered. A trial ensued and during the hearing, the evidence tendered was that the victim was aged 12 years. After the conclusion of the hearing, the trial court found him guilty in its judgment dated 21st December 2018. In his mitigation, he prayed for forgiveness. The trial magistrate sentenced him to serve 20 years in prison.
2. His appeal against both the conviction and sentence at the High Court of Kenya at Nyamira being HCCRA No. 1 of 2019 was dismissed by Maina J. on 17th October 2019 for being devoid of merit.
3. The appellant appealed to this Court challenging both the conviction and sentence. However, during the virtual hearing of this appeal on 3rd September 2025, the appellant abandoned his appeal against conviction and informed this court that he was only proceeding against the sentence.
He urged this Court to reduce the sentence of 20 years imposed by the trial court and up held by the High Court.
4. Learned counsel Mr. Mwangi appearing for the respondent urged this court to uphold the sentence.



5. Our mandate in a second appeal is confined to matters of law only. This jurisdictional restriction is imposed by section 361(1) of the Criminal Procedure Code which in very explicit terms bars this Court from entertaining appeals on matters of fact. The said provision states that severity of sentence is a matter of fact. However, in terms of the said section, where the courts below have acted on a misapprehension of the law, or where the sentence imposed is illegal or based on wrong principles, this Court is entitled to intervene. (See *Njoroge vs Republic* [1982] KLR 388; *Karingo vs Republic* [1982] KLR 213). The Supreme Court in *Republic vs Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR) underscored that the extent of this Court’s jurisdiction in second appeals is limited only to matters of law as provided in section 361 of the Criminal Procedure Code.
6. Section 8(3) of the Act states that a person convicted of defiling a child between the ages of 12 and 15 years is liable to imprisonment for a term of not less than twenty years. The appellant’s appeal against sentence faces several hurdles. First, he was sentenced to 20 years imprisonment, which is the minimum sentence provided by the law. We cannot lower or interfere with the said sentence without going against section 8 (3) of the Act. In addition, the Supreme Court in *Republic vs Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR) was categorical that the mandatory maximum/minimum sentences prescribed by the *Sexual Offences Act* remain lawful so long as they remain in the law books unless and until the law is amended. Accordingly, we have no power to interfere with the said sentence.
7. The other hurdle confronting this appeal is section 361(1) of the Criminal Procedure Code which limits this Court’s jurisdiction to hear an appeal against sentence only where the High Court enhanced the sentence or where the trial court had no power to pass the sentence. These two pre- requisites for this Court to intervene in an appeal against sentence have not been demonstrated to exist in this appeal. (See *Sichei vs Republic (Criminal Appeal 8 of 2020)* [2025] KECA 152 (KLR) (7 February 2025) (Judgment).
8. Accordingly, there is no basis at all upon which we can interfere with the sentence of 20 years imposed upon the appellant. Therefore, this appeal is dismissed for being unsustainable under the law.
9. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JANUARY, 2026.

P. NYAMWEYA

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JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed



DEPUTY REGISTRAR

